

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1039

76-1039

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P/S

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 76-1039

UNITED STATES OF AMERICA

-against-

CARLOS VALLE,

Defendant-Appellant.

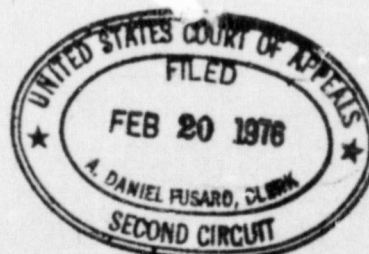
On Appeal From The United States
District Court For The
Southern District of New York

APPELLANT'S APPENDIX

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ATTORNEY FOR



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
: UNITED STATES OF AMERICA,
:
: -against-
:
: CARLOS VALLE,
:
: Defendant-Appellant.
:
-----X

APPENDIX
To Brief for the Appellant

Submitted by,

FREDERICK H. COHN, ESQ.
Attorney for Def. Appellant
299 Broadway
New York, New York 10007
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A P P E N D I X

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

1022ACH
JUDGE CANNELLA

75 CRIM. 857

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.:
US.	Robert J. Costello, AU
CARLOS ALBERTO VALLE	791-1922
	For Defendant:

(12) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 2 mailed	Clerk			
J.S. 3 mailed	Marshal			
Violation	Docket fee			
Title 18				
Sec. 871				
Threats against the President.				
(One Count)				

DATE	PROCEEDINGS
8-27-75	Filed indictment.
9-2-75	Deft. (no atty. present) Court directs entry of not guilty plea continued remanded in lieu of bail fixed at \$10,000. by Minister Case assigned to Judge Cannella for all purposes.
10-28-75	Filed consent order that deft. be brought to Bellevue Hospital in the custody of U.S. Marshal to visit his grand other Cannella, J.
11-24-75	Filed deft. Valle's notice of motion re: suppression.
11-26-75	Filed Govt's affidavit re: opposition to motion of C. Valle to suppress.
11-26-75	Filed memo and on motion of 11-26-75 motion.
12-1-75	Jury trial began before Judge Pollack.
12-2-75	Trial cont'd. Jury disagreement. Jury excused. Trial on 12-3-75 at 2nd Pollack, J.

A. 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :
 :
-v- : INDICTMENT
 :
CARLOS ALBERTO VALLE, : 75 Cr.
a/k/a Carlos Valle, :
 :
Defendant. :
-----x

COUNT ONE

The Grand Jury charges:

On or about the 17th day of August, 1975, in the Southern District of New York, CARLOS ALBERTO VALLE, a/k/a Carlos Valle, the defendant, unlawfully, knowingly and wilfully did make a threat to take the life of and to inflict bodily harm upon the President of the United States, in that he called the New York City Police Department Emergency Telephone Number 911 and stated that one CARLOS VALLE had threatened to kill the President.

(Title 18, United States Code, Section 871.)

FOREMAN

PAUL J. CURRAN
United States Attorney

CHARGE OF THE COURT.

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THE COURT: Ladies and gentlemen, we have reached the conclusion of a very, very short trial as you will all agree. I shall now give you your final instructions which will guide your deliberations. It is your recollection of the facts that counts here, not the recollection of attorneys and not my recollection or any opinions other than your own.

It is for you to determine the weight that will be given to the evidence, the credibility that you will extend to the witnesses who testified, and the reasonable inferences that are to be drawn from the evidence that has been received.

You must approach your duty with an attitude of complete fairness and impartiality, without the slightest trace of prejudice or bias or sympathy either for or against the Government or the defendant. You are the sole and exclusive judges of the facts. Your decision as to the fact is final and conclusive. The law you receive from me, and that will guide you on the legal side.

It is essential in the performance of your duties that as to anything that was ordered stricken from the record, you put it out of your mind and disregard it.

As I have indicated earlier, the indictment

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2 here is but a formal method of accusing a person of a crime,
3 and bringing the case into Court for trial and determina-
4 tion. It's not any evidence that a crime has been committed
5 and no inference of any kind may be drawn from the fact of
6 an indictment. The grand jury which returned the indict-
7 ment was not asked to find out if the defendant was guilty.
8 That is solely your function.

9 The indictment in this case charges that the
10 defendant violated Section 871 of Title 18 of the United
11 States Code which provides, in pertinent part, as follows:

12 "Whoever knowingly and willfully makes any
13 threat to take the life of or to inflict bodily harm on
14 the President of the United States commits a criminal
15 offense."

16 The defendant before you has pleaded not guilty.
17 That places on the Government the burden of proving guilt
18 beyond a reasonable doubt with respect to the crime that
19 the defendant is accused of having committed. That burden
20 never shifts. A defendant is under no obligation to prove
21 his innocence. Indeed a defendant doesn't have to submit
22 any evidence at all. On the contrary, under our law and
23 under our system a defendant is presumed to be innocent
24 of any charge laid against him in an indictment. That pre-
25 sumption existed when the indictment was handed down and

the fact that a defendant does not take the stand under the law creates no inference against him.

A defendant's presumption of innocence remains throughout the trial and in your deliberations. It is a presumption which is sufficient in itself to require an acquittal of a defendant unless you, the jury, on all the evidence are convinced of his guilt beyond a reasonable doubt.

A reasonable doubt is one that arises out of the evidence in the case or the lack of evidence. It's a doubt which is not merely shadowy. A reasonable doubt is one that appeals to your reason, to your judgment, to your common sense, and to your experience. It is not an excuse to avoid performance of an unpleasant duty. A reasonable doubt is such as would cause prudent people to hesitate before acting in matters of importance to themselves.

Putting that a little differently. If you are confronted, as indeed you are here, with an important decision, and after reviewing all the factors that are pertinent to that decision you find yourselves beset by uncertainty and unsure of your judgment, then you have a reasonable doubt.

Conversely, in that same situation if you have taken into account all the elements that pertain to the

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2 problem and you find that you have no uncertainty and no
3 reservation about your judgment, then you have no reason-
4 able doubt.

5 Now, when we say that there is a burden to
6 prove something beyond a reasonable doubt, we do not mean
7 that you must find proof to a positive certainty or proof
8 beyond all possible doubt. If that was the rule, few per-
9 sons, however guilty, could ever be convicted.

10 Except where you have matters from their nature
11 which could be resolved with mathematical certainty, it is
12 practically impossible for a person to be absolutely and
13 completely convinced of any fact. So absolute certainty
14 is not the test.

15 You are going to have to rely upon your own
16 common sense and general experience in evaluating the evi-
17 dence. As I have frequently said to you jurors, when you
18 go into the jury box or into the jury room you don't check
19 your common sense outside and blind yourselves to your
20 ordinary judgment and common experience.

21 In evaluating the evidence which has been
22 placed before you you will determine the reliability of
23 those witnesses that you have heard and the extent to
24 which you can count on any or all of them for accurate
25 accounts of the facts. You have had an opportunity to

observe the witnesses as they testified. You want to be asking yourselves and thinking together how each witness impressed you. Did the witness appear to be truthful, candid, frank and forthright, or did the witness seem evasive or shifty or suspect or in any other way? Did the witness appear to know what he was talking about and did he impress you as having a purpose to report his knowledge to you truthfully and accurately? Was he consistent or self-contradictory? How did the manner and matter of his direct testimony compare with his manner and matter of testimony tested on cross examination?

You should consider not only the intrinsic persuasiveness of each person's testimony by itself but its setting and the circumstances of the whole case. For example, the degree to which any particular item of testimony is corroborated or contradicted by other evidence in the case and all such things you would test by your own mature judgment about life, about people and about human behavior.

The witness may be discredited, or, as we say, impeached by contradictory evidence or by evidence that at other times he made statements inconsistent with his testimony on the witness stand. You should consider, among other things, the question of interest or motive. The witnesses have identified their backgrounds and associations.

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2 If you believe a witness has willfully sworn falsely before
3 you, you are free either to disregard all his testimony or
4 to accept and credit such parts of it as your judgment
5 dictates should be accepted.

6 There are generally speaking two types of evi-
7 dence from which a jury may properly find the truth in the
8 facts of a case. One is direct evidence, such as the tes-
9 timony of an eye witness or a participant. The other is
10 indirect or what we call circumstantial evidence which con-
11 sists of proving a chain of circumstances pointing to the
12 existence or non-existence of certain facts.

13 In order to prove a fact by circumstantial evi-
14 dence there must be some positive proof of some fact which,
15 though true, does not itself directly establish the fact in
16 dispute but does afford basis for a reasonable inference
17 of its existence. The fact or facts upon which it is sought
18 to base an inference must be shown and not left to rest in
19 conjecture, and when shown it must appear that the inference
20 drawn is the only one that can fairly and reasonably be
21 drawn from the facts and that any other explanation is fairly
22 and reasonably excluded.

23 A common example that I give to jurors of
24 circumstantial evidence is the following: Suppose when you
25 came into Court this morning the sun was shining and there

1 were no clouds in the sky, and when you came into the trial
2 Court the blinds were down so that you couldn't see outside.
3 Pretty soon somebody came through the door and walked into
4 the courtroom with a dripping umbrella and a dripping rain-
5 coat. You have been in the jury room or the courtroom all
6 this time and haven't been outside. When you left outside
7 it was clear, but when these people came in with their
8 dripping umbrellas and raincoats something may have happened
9 outside. You would be entitled to infer from the circum-
10 stance that there is a dripping umbrella and a raincoat that
11 it is raining outside. Thus circumstantially you infer from
12 a fact, the dripping raincoat and umbrella, some other
13 matter that it's raining outside. The mind is led circum-
14 stantially from a fact to reach another fact. That will give
15 you an illustration of what circumstantial evidence is and
16 what it may lead to.

17
18 It is not necessary that the participation or
19 lack of participation of a defendant in any crime be shown
20 by direct evidence. The connection may be inferred from
21 such facts and circumstances as legitimately tend to sus-
22 tain that inference.

23 You apply to all the evidence the same standard
24 of proof. It must satisfy you of the guilt of the defendant
25 beyond a reasonable doubt or else you must acquit the defen-

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2 dant.

3 In order to sustain its burden of proof in this
4 case against the defendant, the Government must establish
5 beyond a reasonable doubt these two essential elements:

6 One, that the defendant made a threat against
7 the person of the President of the United States; and two,
8 that such threat was knowingly and willfully made.

9 A true threat is not merely a political comment
10 or jest. Rather a true threat is a statement which, when
11 uttered, will be taken seriously as a threat by those hear-
12 ing it. It isn't the intention of the one who makes the
13 statement; will it be taken seriously as a threat by those
14 hearing it? If you find beyond a reasonable doubt that the
15 defendant made statements that would be interpreted by
16 reasonable men as a serious expression of an intention to
17 inflict bodily harm upon or take the life of the President,
18 then you would be justified in finding that a true threat
19 was in fact made.

20 The threat to be a crime may be made by words
21 alone. For it is the forbidden utterance that is the
22 criminal act. You must, therefore, judge the message the
23 words communicate in the context and under the circumstances
24 of the utterance.

25 If you find that a true threat was made and

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2 that the defendant made such a threat as I have described,
3 you must then determine whether the defendant made the threat
4 knowingly and willfully. The Government does not have to
5 prove that the defendant uttered the words with an inten-
6 tion to carry out the threats. In other words, the defen-
7 dant is charged with committing the knowing and willful
8 act of threatening the person of the President. Thus what
9 must be willful is the threat. It is the making of the
10 threat, not the intent to carry it out, that violates the
11 law.

12 I instruct you that the elements knowingly and
13 willfully mean deliberately. They mean intentionally.
14 In other words, knowingly and willfully mean that the per-
15 son uttered the words with the comprehension that the words
16 were a threat, as I have defined it, and that he intended
17 to make the threat consciously and in the free exercise of
18 his will and not inadvertently or accidentally.

19 You cannot look into a person's mind to see
20 what his intentions are or were. You may judge those from
21 acts, speech and circumstance. A wise and intelligent
22 consideration of all facts and circumstances shown by the
23 evidence and the exhibits in the case may enable you to
24 infer, with a reasonable degree of certainty, what were
25 the defendant's intentions at the time he made certain

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2 statements and at the time he committed certain other
3 acts. That reasonable degree of certainty must meet the
4 test of beyond a reasonable doubt.

5 One of the most important issues in this case,
6 of course, is the identification of the defendant as the
7 perpetrator of the alleged threat. The Government has
8 offered the tapes, and from it the voices you have heard
9 on those tapes as proof on this issue. There is no other
10 proof on this issue. The Government has the burden on
11 this issue of proving identity beyond a reasonable doubt.

12 This, as I have said before, does not mean
13 mathematical, 100 per cent certainty. It does require a
14 finding beyond a reasonable doubt that it was the defen-
15 dant who made the telephone call.

16 If you are not convinced beyond a reasonable
17 doubt that it was the defendant who made the phone call,
18 you must find the defendant not guilty. If you are con-
19 vinced by the evidence beyond a reasonable doubt that it
20 was the defendant who made the phone call, you may find
21 that the Government has sustained its burden of proof on
22 that.

23 Before being questioned by Government repre-
24 sentatives, according to the Government witness, the defen-
25 dant was read, and in writing acknowledged having received

2 a statement of his legal rights. That was what he was en-
3 titled to. The Government was not also obligated to obtain
4 a signed waiver. That was optional with the defendant.
5 There was no evidence that the defendant refused to waive
6 his rights. The testimony indicated that he declined to
7 also sign a waiver. No evidence indicates that his state-
8 ments to the agents were not voluntarily given and made at
9 the interview. The jury may consider the alleged statements
10 of the defendant, if it believes that they were made on the
11 interview, as part of the circumstances bearing on his
12 alleged motive and intent.

13 You will bear in mind that in making these
14 references to the testimony it is your recollection of the
15 evidence, not mine or counsel's, that governs you in pass-
16 ing on the evidence.

17 I have no function in telling you the evidence,
18 other than to give you my recollection with which you are
19 not bound in any way.

20 Under your oath as jurors you swore to render
21 a true verdict on the evidence. The duty of imposing sen-
22 tence rests exclusively upon this Court. Your function is
23 to weigh the evidence in the case and determine the guilt
24 or innocence of the defendant solely on the basis of such
25 evidence and the law. You cannot allow any consideration

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2 of the punishment which might be inflicted upon a defendant,
3 if convicted, to influence your verdict in any way or in any
4 sense enter into your deliberations. Were you to do that
5 you would be trespassing on the function of the Judge.

6 I want you to listen to each other carefully in
7 the jury room when you retire to consider this matter. If
8 you have some views and find that you are wrong and some-
9 body else is right, don't be embarrassed about changing
10 your opinion. We are not engaging in a popularity contest
11 here. But remember each of you has to decide the case for
12 yourselves. A verdict of guilty or not guilty to be accept-
13 able must be unanimous.

14 If you desire any of the exhibits or the tapes,
15 those will be sent to you in the jury room upon request.
16 If you want any of the testimony that has been allowed in
17 evidence read to you, that can be done also. Please do
18 not communicate with anyone concerning your deliberations
19 about this case except in writing signed by your foreman,
20 Mrs. Wolf, who sits in the first seat, and she will be pro-
21 vided with a pencil and paper for that purpose.

22 I would like to take a moment to talk to the
23 lawyers at the side bar. They may wish to call to my
24 attention some matter that I may have overlooked or where
25 I may have misspoken and I will ask you to relax for a

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moment while I do that.

(At the side bar.)

THE COURT: Any exceptions or requests on the part of the Government?

MR. COSTELLO: No, your Honor.

MR. COHEN: Exceptions first, your Honor. I object, firstly, to your Honor's comment on the signed waiver. I did not raise voluntariness. In fact I told them I wished them to consider the confession. I think that your comments, if I had raised voluntariness your comments would have been correct. But they have no application since I did not raise voluntariness but used his methodology merely to show the agent's motive in what he did.

THE COURT: You specifically referred to the subject of voluntariness and I thought during the trial by the form and innuendos of your questions that you were clearly raising that issue. At all events, I have so charged and at this moment there will be no point to suggesting to the jury that they erase my charge from their minds.

MR. COHEN: I understand, your Honor. I'm not suggesting that you can do that, but I do respectfully suggest that it was erroneous. That my summation was

was the one communicated by the phone call.

to have made a threat. The only question of threat here

MR. COHEN: Essentially I told you that he had

THE COURT: How do you want me to charge that?

charge here.

he threatened outside the phone call. That is not the

to kill the President. So there might be an inference that

here is that somebody called and said Carlos Valje wanted

that the threat had to be in the phone call. The evidence

when you say that the defendant made a threat, that you state

would ask you amend that part of your charge on the elements

as to suggestions, requested additions, I

that wasn't your intent but I do feel it had that effect.

question on the voices that you had some opinion. I know

mathematical certainty. I felt that that indicated a close

stressing the mathematical certainty or the lack of

to your stressing on the identification charge your re-

In any event, the second point is that I object

in front of the jury.

it, not to throw out, that is sufficient, that is a waiver

MR. COHEN: If I tell them I want you to consider

trial facts.

THE COURT: Your summation didn't follow your

charge clear on the subject.

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(End of charge.)

(Jury commences deliberations at 11:10 a.m.)

do not now to deliberate.

THE COURT: Mrs. Hoff and the jurors, you may
(marriage sworn.)

THE COURT: The marriage may be sworn.

MR. COHEN: Fine, Your Honor. Thank you.
Is that all right?

and no other matter.

threat. It is the content of that that you are to consider
that was and is what the government is charging as the
threat that was communicated in the phone call. That con-
tent that is involved here and for you to consider is the alleged
to add for purposes of clarification that the only threat

THE COURT: Ladies and gentlemen, I would like
(in open court.)

MR. COZZETTO: Thank you, Your Honor.

MR. COHEN: That's it.

THE COURT: That's all.

Date

Signature

(Court Reporter)

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Estimated completion date

of pages

Estimated number

COURT REPORTER ACKNOWLEDGEMENT

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DATE December 24th 1972

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FAR 10(b)) Method of payment Funds ☒ CTA Form 31

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of

☐ Other: Attorney explanation

☐ U.S. Attorney has placed order

☐ Daily copy is available

Reason:

☐ I am not ordering a transcript

☒ I am ordering a transcript

☐ Post-trial proceedings

☐ Sentence

☒ Trial

☐ Pre-trial proceedings

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OF APPEALS FOR 2d

APPEAL TO U.S. COURT

QUESTIONNAIRE

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT ORDER

REQUIRED INCLUDE DATE FOR WHICH TRANSCRIPT IS DESCRIPTION OF PROCEEDINGS

TRANSCRIPT INFORMATION - FORM B

ADD ADDITIONAL PAGE IF NECESSARY

Phone Number

NEW YORK, NEW YORK 10001

125 Broadway Plaza

To: UNITED STATES ATTORNEY SDNY

Date: January 12, 1973

Address

ST 348-1122

NEW YORK, NEW YORK 10001

348 Broadway

FREDEBICK H. CONN

(Court reporter for appeals)

(Date)

entered in this action on January 12, 1973

by the Court of Appeals for the Second Circuit from the judgment rendered

in the case of the Court of Appeals for the Second Circuit from the judgment rendered

in the case of the Court of Appeals for the Second Circuit from the judgment rendered

CERTIFICATE

appeals to

HOUSE OF REPRESENTATIVES

(Court reporter for appeals)

FOR: HILTON HILLOCK

Document Number

12-01-73

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JAN 25 1973
U.S. DISTRICT COURT
SDNY

that or other parties
and commitment to the
a certain copy of the
it is ordered that the

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NOTICE
RECOMMENDATION
COMMITMENT

PROBATION
OF
CONDITIONS
ADDITIONAL

The court orders commitment to the custody of the Attorney General and recommends

probation for a probation occurring during the probation period
and time during the probation period or within a probation period of five years beginning on the day of the judgment and
leaving time of the judgment be imposed. The Court may extend the conditions of probation, reduce or extend the period of probation
in addition to the special conditions of probation imposed above. It is hereby ordered that the General conditions of probation set out

PROBATION
OF
CONDITIONS
SPECIAL

ORDER
PROBATION
ON
SENTENCE

MICROFILM

JAN 10 1936

for a period of two years
commitment to the custody of the Attorney General or the authorized representative for imprisonment for a period of ONE (1) year
or more or otherwise to the court the court ordered the defendant to be committed and ordered that the defendant
the court order the defendant to be committed to the custody of the Attorney General or the authorized representative for imprisonment for a period of

to the court the court ordered the defendant to be committed and ordered that the defendant
the court order the defendant to be committed to the custody of the Attorney General or the authorized representative for imprisonment for a period of

NOT COMING

NOT COMING, defendant is described

NOT COMING

NOT COMING

(Name of counsel)